

REMARKS

This Response is in reply to the Office Action mailed March 5, 2009. Claims 7, 9-16, 20-24, 26-56, 58-64, and 66-85 were pending in the application. Claims 26-42, 58-64, 66-69, 77, 83, and 84 were allowed. Claims 43-56 and 85 were objected to. Claims 70-76 and 78-81 were withdrawn from consideration. Claims 7, 9-16, 20-24 and 82 were rejected.

Claims 43-56 and 82 were objected to because line 13 of claim 43 included the term "gap". Claim 43 has been amended to change the term "gap" to "notch".

Claim 7 was rejected under 35 USC 112, second paragraph because line 10 includes the limitation "the enlarged first end". Claim 7 has been amended to delete the term "enlarged".

Claims 9, 12-16, and 20-24 were rejected under 35 USC 102(e) as being anticipated by US Patent Application Publication No. 2002/0029039. In the Response to Arguments section of the Office Action on pages 7 and 8, it appears that the Examiner rejects these claims because claim 9 does not require that the brace be adapted for contacting the inferior surface while implanted such that the at least one hook engages a S1 vertebra. Claim 9 has been amended to now include that the implant is configured for the brace to contact the inferior surface of the spinous process of the L5 vertebra while the at least one hook engages the S1 vertebra. For at least this reason, independent claim 9 and dependent claims 12-16 and 20-24 are not anticipated by US Patent Application Publication No. 2002/0029039.

Claims 9, 13-16, 20-24, and 82 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,415,659. Claim 9 has been amended to now include that the implant is configured for the brace to contact the inferior surface of the spinous process of the L5 vertebra while the at least one hook engages the S1 vertebra. For at least this reason, independent claim 9 and dependent claims 13-16, 20-24, and 82 are not anticipated by U.S. Patent No. 5,415,659.

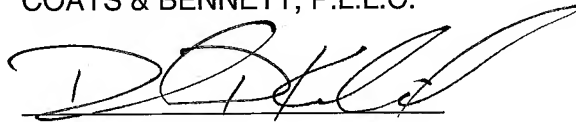
Claims 10-12 were rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,415,659. Claims 10-12 each depend from independent claim 9 and are not made obvious for at least the same reasons as independent claim 9.

Claims 10-11 were rejected under 35 USC 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0029039. Claims 10-11 each depend from independent claim 9 and are not made obvious for at least the same reasons as independent claim 9.

Claims 32, 49 and 64 have been amended to remove extraneous language.

In view of the above amendments and remarks, the Applicant submits the present application is in condition for allowance, and such action is respectfully requested.

Respectfully submitted,
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